FILE COPY

Office Supreme Court, U.S.
FILED
SEP 9 1950
CHARLES ELMORE CROPLEY, Clerk

No. 308

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1950

THADDEUS G. BENTON and J. LAMAR BUTLER,

*Petitioners,*

vs.

GLENN McCARTHY, GLENN McCARTHY, INC., and WILLIAM McCARTHY,

*Respondents.*

## BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

[redacted]
Attorneys for Respondents
[redacted]
New York 17, N. Y.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1960

No.

THADDEUS G. BENTON and J. LAMAR BUTLER,
Petitioners,

*v.*

GLENN McCARTHY, GLENN McCARTHY, INC., and WILLIAM McCARTHY,
Respondents.

## BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

### Preliminary.

The petition seeks to review a judgment of the United States Court of Appeals for the Second Circuit, which unanimously affirmed a judgment for defendants dismissing plaintiffs' action for money damages for alleged breach of contract after a trial without jury before Frederick van Pelt Bryan, Judge.

### Opinion of the District Court.

Perhaps because they govern the consideration and disposition of this case, the petition omits the opinion of the District Court which contains the findings of fact unanimously affirmed below. It is printed as an appendix hereto, and it disposes of the petition on its face.

## Questions Presented.

(a)

Petitioners contend that the courts below rendered a decision involving an important state question in a way in conflict with applicable state law. The alleged important question is whether a principal may rely upon non-performance of a condition precedent to escape liability for commission to a broker if non-performance is the fault of the principal.

It is plain from the findings below that this question is not in the case. The District Court found: that the frustration of the financing agreement brought about by the plaintiff's efforts was not the result of non-performance of a condition precedent; that the financing agreement was terminated in good faith, and by reason of circumstances beyond the control of the parties; and that the express understanding with the broker was that commissions were payable only out of funds advanced for financing the venture. It is conceded that no such funds were raised or provided.

(b)

Petitioners further contend there was no credible evidence to support the finding that the commission agreement required the receipt of money by the principal from financiers before liability for commission attached.

As to this the Court of Appeals said:

> "On this appeal, plaintiffs recite at some length the evidence adduced at the trial in an attempt to overturn the findings below. They have, however, succeeded only in demonstrating the conflicting nature of the testimony . . ."

## Statement of Case.

Judge Bryan's opinion and findings sufficiently outlines the case for present purposes. This was a simple brokerage case tried in a federal court merely because of diversity. The issues were ultimately determined in conflicting testimony. Nothing else is involved.

## I.

## The Petition is Frivolous.

As stated above this was a simple brokerage case. Federal jurisdiction was based solely on diversity of citizenship. No question of federal law was involved, nor any controversial question of state law. Review of the findings of fact is precluded by Rule 52(a) of the Federal Rules of Civil Procedure; and those findings compelled the conclusion of law below.

Nothing in this case approaches the standards of Rule 19 of this Court, as a basis for the exercise of its discretion in petitioner's favor.

## Conclusion.

The petition for a writ of Certiorari should be denied.

Respectfully submitted,

EDWARD M. GARLOCK,
Attorney for Respondents.

# APPENDIX.

## Opinion No. 25053.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

---

CIV. 106-314.

---

THADDEUS G. BENTON,

Plaintiff and

J. LAMAR BUTLER,

Intervenor and Third Party Plaintiff,

vs.

GLENN MCCARTHY, GLENN MCCARTHY, INC. and WILLIAM MCCARTHY,

Defendants.

---

Appearances:

THADDEUS G. BENTON, Esq., Attorney for Plaintiff and Intervenor and Third Party Plaintiff: Thaddeus G. Benton, Esq., and C. Joseph Hallinan, Esq., of Counsel.

LEO B. MITTELMAN, Esq., Attorney for Defendants.

---

Bryan, J.:

The Court: Gentlemen, I have followed the testimony here very closely as it went along and I have reviewed the evidence over the weekend and given the matter thorough study and consideration, and I have also examined the vari-

ous authorities submitted by the parties and some on my own. So I am prepared to give you what will be an informal oral decision.

The issues here, as framed by the pretrial order, are, some nine in number. In addition to the issues as so framed, there were several others which were presented during the course of the trial and these should also be decided.

First, as to the issues framed in the pretrial order, I find as follows:

The first issue framed is "Whether the defendants or any of them entered into an agreement of joint venture with the two plaintiffs in 1955 or with plaintiff Butler for the procurement by the plaintiffs of a party ready, willing and able to enter into a contract with the defendants Glenn McCarthy, Inc. and Glenn McCarthy"—presumably and/or Glenn McCarthy, Inc. alone. I am interpolating now—"for the expenditure of approximately $2,000,000 for financing the further development of the defendants' oil and gas concession of 970,000 acres of land in Bolivia.

As to that issue, I find that the plaintiffs have failed to establish that there was any agreement of joint venture between them, or either of them, and the defendants, or any of them, for the procurement by the plaintiffs of a party ready, willing and able to enter into a contract with defendants Glenn McCarthy, Inc. and Glenn McCarthy, or with either of them, for the expenditure of approximately $2,000,000 for financing the further development of the Bolivian concession.

During the course of the trial from time to time there were some indications that the plaintiffs were not pressing their theory of a joint venture. If this were so, this was a wise point of view, as I see it. Nothing could be further from a joint venture than the transactions which are involved in this case. These two plaintiffs are nothing more than brokers who were trying to arrange for the

financing of a business transaction. If they are joint venturers with the defendants, so is every broker. There is nothing here which indicates that all the parties "pooled their efforts (or had) a mutual right to control the transaction, that the plaintiffs were to share in the losses * * *." Wagner *v.* Derecktor, 306 N. Y. 386. There was not even any right to share in the profits of the transaction, which even had it existed, would not conclusively establish a joint venture. Jacobs *v.* Escoett, 265 App. Div. 111. See, also, Jasper *v.* Bernstein, 250 App. Div. 638.

Here Butler, during the course of the transaction, thought only in terms of compensation for his services. During his conversations with William McCarthy, Cunningham and Glenn McCarthy, it is quite clear from the testimony that his only thought was to receive some compensation or compensation of some sort for his work. It seems to me he would have been surprised, to say the least, had it been suggested to him that he was participating in the risks of the joint venture in any manner whatsoever.

The second issue formulated by the pre-trial order reads as follows, "Whether the defendants promised plaintiff Butler that if he procured such a party," that is, a party to finance the Bolivian concession, "defendants were to assign to plaintiff Butler a 'carried interest' in the aforesaid concession, free of development overriding costs to Butler or a 5 per cent overriding royalty, or to pay to Butler 5 per cent of the money which such financier should agree to invest in the concession," and, as a second question, "Whether the defendants also authorized plaintiff Butler to engage plaintiff Benton's services and to agree in its behalf to assign to plaintiff Benton a carried 5 per cent interest in the aforesaid concession free of all costs of development and operating expenses to Benton, provided that plaintiff Benton obtained such a party in company with the plaintiff Butler to finance the development of the concession."

As to this second issue, I find that the plaintiff Butler was never promised by the defendants or any of them that the defendants were to assign to them a carried interest in the concession, or a 5 per cent overriding royalty, or 5 per cent of the money which might be invested by a prospective financier in the concession.

I further find that Butler was never authorized by the defendants to engage Benton's services or to make any arrangement with Benton on the defendants' behalf. Thus, as far as Benton is concerned, Benton has no connection whatsoever with the defendants, and has no rights whatsoever against them.

The third issue framed is whether, and I quote again, "Whether, if defendants did not so authorize Butler to agree to pay Benton a 5 per cent carried interest, defendants had promised to pay plaintiff Butler a 10 per cent carried interest plus 5 per cent of the money which such financier should agree to invest in the concession. If the question is not answered in the affirmative, what did defendants promise to pay the defendant Butler.

As to the third issue so framed, I find there was no agreement on the part of the defendants, or any of them, to pay Butler a 10 per cent carried interest in the concession, plus five per cent of the money which a financier might agree to invest in the concession. The only agreement made by any of the defendants was an agreement by defendant Glenn McCarthy, Inc., through its president, Glenn McCarthy, to pay to the plaintiff Butler a reasonable commission for procuring financing for the Bolivian concession to be payable progressively only upon the payment by the prospective financier to Glenn McCarthy, Inc. of the various amounts of financing due to be paid by such prospective financier. The evidence makes it quite clear that in no event was Butler to be paid unless and until the moneys by way of financing were actually paid by the prospective financier to Glenn McCarthy, Inc.; that is to say, perhaps he would have been entitled, and may well have been, to

progressive payments as financing payments were made, but no payments until such financing payments started. By way of reference, see Fuller *v.* Bradley Contracting Co., 183 App. Div. 6, aff'd 229 N. Y. 505; Amies *v.* Wesenofske, 255 N. Y. 156; Wiessenberger *v.* Mayers, 281 App. Div. 171. Cf. Wagner *v.* Derecktor, 306 N. Y. 386.

The fourth issue, as framed by the pleadings, is "Whether Glenn McCarthy, Inc. and Glenn McCarthy, individually, assumed liability for all commissions, brokerage fees or finders' fees payable by reason of the Keljikan Commercial Corporation and Glenn McCarthy, Inc. executing their agreement of June 20, 1955."

As to issue No. 4, I find that Glenn McCarthy, Inc. assumed liability for all commissions, brokerage fees or finders fees payable by reason of the execution of the June 20, 1955 agreement between Keljikan Commercial Corporation and Glenn McCarthy, Inc., but, since there were no such commissions, brokerage fees or finders fees payable by reason of the execution and they were not payable until there were actually financing payments made, there was no liability on the part of Glenn McCarthy, Inc. to the plaintiffs or either of them. On this question, I further find that Glenn McCarthy, individually, assumed no liability at any time for the payment of any commissions, brokerage fees or finders fees in connection with this transaction.

In this connection, I should say that Section 5 of the June 20, 1955 agreement between the Keljikan Commercial Corporation and Glenn McCarthy, Inc., which provides for the payment by Glenn McCarthy, Inc. of such commissions, was inserted in the contract at the request of the Keljikans as a normal incident of protection to them in connection with a contract of this character. It has no factual or legal significance in so far as a binding obligation on the part of Glenn McCarthy, Inc. to these plaintiffs, or either of them, is concerned.

The fifth framed issue is, "Whether the plaintiffs were the procuring cause of producing Keljikan Commercial Corporation to enter into the agreement between it and Glenn McCarthy, Inc. of June 20, 1955."

As to five, I find that the plaintiff Benton introduced the Keljikans to the plaintiff Butler and the plaintiff Butler introduced the Keljikans to the defendants. However, I find that the proposal for financing on a 60-40 basis which Butler presented to the Keljikans was not authorized by Glenn McCarthy, Inc. or Glenn McCarthy, on its behalf, nor did the Keljikans ever accept Butler's proposal. The agreement of June 20, 1955 entered into between Keljikan and Glenn McCarthy, Inc. did not embody the proposal which Butler presented to the Keljikans as the proposal of Glenn McCarthy, Inc. It is apparent from the testimony of the Kiljikan brothers on the stand, and Glenn McCarthy, which I accept, that the proposal discussed between Glenn McCarthy and the Keljikans, negotiations concerning which resulted in the contract of June 20, 1955, was a matching deal for a 50-50 arrangement on a 50-50 basis. The 60-40 proposal made by Butler was made for the purpose of enabling himself and Benton to acquire a 10 per cent interest in the concession, was not in the best interests of either of the parties to the June 20th agreement and, in fact, was never the subject even of negotiations between the Keljikans and the representatives of Glenn McCarthy, Inc.

In view of what has been said, it is unnecessary to determine framed issues 6, 7, 8 and 9 relating to the actions of the parties with respect to the June 20th, 1955 contract, after it was executed, and with respect to the subject matter of the value of a 5 per cent carried interest in the Bolivian concession.

For the purposes of the record, however, I find that Glenn McCarthy, Inc. in good faith attempted to carry out its obligations under the contract of June 20, 1955. These included securing from the Mutual Security Agency of the United States Government a guarantee against expropria-

tion of the lease and a guarantee of the convertibility of funds derived from the sale of oil and gas produced from the lease into United States dollars. However, Glenn McCarthy, Inc. was unable to comply with these conditions within a reasonable time after the execution of the contract.

I find that the contract of June 20, 1955 was terminated by mutual consent of the parties on April 23, 1956, after efforts in good faith by Glenn McCarthy, Inc. to comply with the terms and conditions thereof.

I find, further, that such termination by the parties was in good faith and arose because of difficulties and complications during the period of time when the contract remained in effect. These complications included the difficulties of obtaining the necessary guarantees against expropriation and as to convertibility, and the need for substantially greater financing than the Keljikans were prepared to supply, in view of the prospects opened up by negotiations with the Anaconda Copper Company and its subsidiaries and representatives. In fact, these difficulties and complications are in themselves an indication of the reason why the understanding between Glenn McCarthy, Inc. and Butler for the payment of commissions was conditioned upon the actual receipt of money by way of financing by Glenn McCarthy, Inc. from the Keljikans or any other financier.

As I have previously pointed out, in the absence of such payment there was no liability whatsoever on the part of Glenn McCarthy, Inc. to Butler and, therefore, in my view of the case, the above finding as to what happened subsequent to the execution of the contract is largely academic.

Additional issues which should be decided for the purposes of the record are as follows:

1. Did William McCarthy have any authority to make binding agreements on behalf of Glenn McCarthy or Glenn McCarthy, Inc. with respect to the payment of commissions to Butler or Benton, or either of them, for procuring financing of the Bolivian concession?

2. Did David Cunningham have any such authority?

3. Are the plaintiffs or either of them, entitled to recover from the defendants, or any of them, for services rendered in connection with the transaction which was embodied in the agreement between the Keljikans and Glenn McCarthy, Inc. of June 20, 1955, or for introducing the Keljikans to Glenn McCarthy, or for any other services rendered in connection with the Bolivian concession?

4. Are the plaintiffs, or either of them, entitled to a brokerage commission for producing the Keljikans as the parties who entered into the agreement for financing of the Bolivian concession with Glenn McCarthy, Inc. of June 20, 1955?

As to the questions of the authority of William McCarthy and David Cunningham, I find that William McCarthy had no authority whatsoever to bind Glenn McCarthy or Glenn McCarthy, Inc. to any arrangement for the payment of commissions for the financing of the Bolivian concession. Quite apart from this, however, I find that William McCarthy never represented to Butler or Benton that he had such authority, and, in fact, at all times made it clear to them that he had no such authority. I also find that at no time did Glenn McCarthy ever represent to Butler, or indeed to Benton, whom he never saw at all, that William McCarthy had any such authority; nor was William McCarthy clothed with apparent authority by any action of William McCarthy, or its president, Glenn McCarthy, or any authorized agent of the corporation. See, Skutt, Inc. *v.* Goodwin, Ltd., 251 App. Div. 84, and Gumpert *v.* Bon Ami Co., 2 Cir., 251 F. 2d 735, 738.

The same findings are made with respect to the authority of David Cunningham. David Cunningham was a lawyer representing a client and performing legal ser-

vices for him. All that Cunningham did was to perform the usual services of a lawyer and to transmit from time to time information concerning the project to Butler and Benton and prospective purchasers. This, Butler and Benton, as lawyers themselves, knew, or should have known. There was no reason whatsoever for them to be in any way misled as to the functions of David Cunningham or the authority which he possessed. Indeed, like William McCarthy, David Cunningham at no time represented to either Butler or Benton that he had any authority to bind Glenn McCarthy or Glenn McCarthy, Inc. and made it quite clear that he had no such authority. As in the case of William McCarthy, no acts of Glenn McCarthy, Inc., or Glenn McCarthy, clothed Cunningham with any apparent authority so to act.

As an example, when Cunningham drafted the three letters dated June 17, 1955 regarding the compensation claimed by Benton and Hopkins, he made it quite plain to them that any arrangements for compensation were entirely in the hands of Glenn McCarthy and that he, Cunningham, had no authority to make any arrangements with respect thereto.

In all previous discussions of compensation with the plaintiffs, or either of them, the same thing was made quite clear to the plaintiffs. In the first meeting between Benton and William McCarthy at which Butler was present, William McCarthy expressly told the plaintiff that he had no authority and that the only person who could make an arrangement with respect to commissions was Glenn McCarthy himself.

With respect to *quantum meruit* and brokerage, a cause of action in *quantum meruit* was added to the complaint on the plaintiff's motion, with permission of the Court, at the close of the plaintiff's case.

Since any commissions payable by Glenn McCarthy, Inc. to Butler were governed by understanding between these two parties and were made specifically dependent upon the

actual receipt of payments by Glenn McCarthy, Inc. from the financier in this case the Keljikans, it is quite plain that there is no liability in *quantum meruit* on the part of defendant Glenn McCarthy, Inc.; nor is there any liability for the payment of brokerage commissions other than as fixed by the understanding between Glenn McCarthy, Inc. and Butler with respect to the subject matter, as I have previously found. Such services by way of introduction or otherwise as Butler performed were undertaken by him upon the understanding that he would receive compensation by way of commissions if, and only if, Glenn McCarthy, Inc. actually received payment by way of financing or consideration from the sale of the one-half interest in the concession and not otherwise. Since that condition never was fulfilled there can be no recovery on Butler's part on a *quantum meruit* or brokerage theory.

A word as to the liability of the individual defendants in this case as distinguished from the corporate defendant, Glenn McCarthy, Inc. As to William McCarthy, I have already pointed out that William McCarthy was not authorized by Glenn McCarthy, Inc. or Glenn McCarthy to make any agreement with Butler or Benton, or either of them, with respect to compensation for obtaining financing for the Bolivian concession, and that William McCarthy did not represent to the plaintiffs, or either of them, that he had such authority. This in itself might be thought sufficient to relieve William McCarthy from any liability to these plaintiffs, but in case there be any doubt about the matter, I find that no such liability exists, and that at no time did William McCarthy make any agreement of any kind with plaintiffs whereby he became liable on his own behalf for any acts of plaintiffs, or either of them, in procuring financing for the Bolivian concession or otherwise. Moreover, the plaintiffs performed no service for William McCarthy or any kind for which William McCarthy might be held liable on a *quantum meruit* basis.

As far as the individual defendant Glenn McCarthy is concerned, I find that Glenn McCarthy was acting throughout these transactions solely in his capacity as president of Glenn McCarthy, Inc. and not individually. Since I have found that Glenn McCarthy, Inc. is not liable in any respect to these plaintiffs, it follows that Glenn McCarthy is not liable either. So that the matter may be entirely clear, however, I find that at no time did Glenn McCarthy enter into any arrangement individually with the plaintiffs, or either of them, by which he undertook any obligation individually to pay to the plaintiffs any sums by way of commissions in connection with the Bolivian concession and he is not liable therefor. Nor did the plaintiffs, or either of them, perform any services for Glenn McCarthy individually by which Glenn McCarthy became liable to them, or either of them, in *quantum meruit* for the reasonable value of their services by way of brokerage or otherwise.

What has been already said makes it unnecessary to discuss the defense of the statute of frauds under Section 31(10) of the New York Personal Property law which the defendants were permitted to interpose by motion during the course of the trial.

The plaintiffs have laid great emphasis on the credibility to be given to the testimony adduced on their behalf and to that adduced on behalf of the defendants, and have urged that this is a controlling factor in the case. Plaintiffs have taken the position that if the Court believes the testimony given on their behalf it must find for them. I do not find this to be so. For even on plaintiffs' version of the facts there is at the least grave doubt as to whether Butler made out a prima facie liability and even greater doubt as to Benton.

But quite apart from this, in so far as the versions of the parties with respect to the transactions between them differ, as they do in material respects, I find that the plaintiffs' version of the transactions is not credible in the light of all the evidence and all of the facts and circumstances. View-

ing the testimony as a whole against the circumstances and background of these transactions, it is inconceivable to me that the defendant Glenn McCarthy, Inc. or Glenn McCarthy on its behalf, agreed or would have agreed to give to each of the plaintiffs Butler and Benton a 5 per cent carried interest in the Bolivian concession as the plaintiffs claim. Nor is it conceivable that there was any agreement to give Butler any carried interest in the concession. The most that can be said is that the Glenn McCarthy, Inc., through its president Glenn McCarthy, agreed to pay the plaintiff Butler a reasonable commission in consideration of procuring financing for the Bolivian concession satisfactory to McCarthy, Inc. in the sum of $2,000,000, such commission to be payable progressively if and when moneys were actually paid to Glenn McCarthy, Inc. by the parties so procured.

I find that Glenn McCarthy, acting on behalf of Glenn McCarthy, Inc., made this plain to Butler at the meeting in Houston, Texas, on or about March 9, 1955, when commissions on the so-called Pullman transaction were discussed, and his conduct throughout these transactions indicates to me that he never deviated from this position. Butler, at least, acquiesced in this understanding, and his own testimony indicates that this was his own understanding of the arrangement. Butler's attempts to procure through David Cunningham a letter from Glenn McCarthy altering these arrangements was unavailing and Glenn McCarthy was under no obligation to pay commissions otherwise than in accordance with his understanding. The understanding always was that Butler was to receive compensation by way of commissions of a reasonable amount, payable progressively upon the receipt of actual payments by Glenn McCarthy, Inc. from the proposed financier. Such an agreement is neither unconscionable nor unreasonable. As Judge Andrews stated in Colvin *v.* Post Mortgage & Land Co., 225 N. Y. 510, 517:

"No collections, no commissions has a fair business appeal to both seller and broker."

And see Bliven *v.* Lighthouse, 231 N. Y. 64.

Such dealings as McCarthy had were entirely with Butler and Butler had no reason whatsoever to expect that he would become entitled to anything other than what Glenn McCarthy undertook to pay him in his letter of June 20, 1955, which was conditioned upon actual payment by the Keljikans to Glenn McCarthy, Inc. of the consideration and for the transfer to the Keljikans of a one-half interest in the concession.

As far as the plaintiff Benton is concerned, he was nothing more than a pure volunteer who brought to Butler a prospective financier for the Bolivian concession in the hope that if financing were produced he would be compensated in some manner by someone. No authorized agent of Glenn McCarthy, Inc. entered into any agreement with Benton or anyone else to compensate him by way of commissions or otherwise. In so far as Glenn McCarthy, Inc. was concerned, Benton was a stranger to these transactions. No services were performed by Benton for Glenn McCarthy, Inc. at the instance and request of Glenn McCarthy, Inc. or any of its authorized agents. The only understanding of any kind which Glenn McCarthy, Inc. had with respect to compensation or commissions was with Butler. It may be that if Butler had become entitled to any commissions, Benton might have been entitled to share in them, but Benton had no independent rights whatsoever against Glenn McCarthy, Inc., or the individual defendants arising out of these transactions.

As to the so-called 60-40 deal the plaintiffs claim was presented to the Keljikans by them, I find that no such deal was ever authorized by Glenn McCarthy or Glenn McCarthy, Inc., and that this was made clear to the Keljikans at the very outset of the negotiations that Glenn McCarthy had with them on behalf of his corporation and

also to Butler. The evidence makes it quite plain to me that the 60-40 proposition originally presented by Butler to the Keljikans was simply an unsuccessful attempt by Butler and Benton, without authority from McCarthy or anyone else, to obtain an interest in the concession of 10 per cent to which they were not entitled on any theory whatsoever.

The Keljikans were quite aware that the deal had been shopped around all over New York, and, in fact, in other sections of the country on a 50-50 basis and there was not the slightest reason to suppose that a deal on any other basis was possible.

In view of what happened during the course of the trial concerning the letter of June 4, 1955, signed by Butler at Benton's instance, and delivered to Benton, I feel I should make a special finding on that subject. I do this because there were indications during the course of the trial that the June 4 letter, instead of being signed on that date, had been in fact prepared and signed subsequent to the execution of the Keljikan agreement, and while litigation between Benton and McCarthy was at least contemplated, if not actually pending. If this had been the fact, there would have been a serious question in my mind as to whether or not there had been an attempt on the part of the plaintiffs to manufacture evidence. Without going further into the matter at this time, it is apparent this would have posed some serious questions indeed.

In the light of all the testimony, however, I now find that the letter of June 4, 1955 was in fact executed on or about that date and prior to the execution of the agreement between Glenn McCarthy, Inc. and the Keljikans executed on June 20, 1955. These findings remove the suspicion that the plaintiff Benton, a member of the New York bar, and the plaintiff Butler, a member of the California bar, were concerned in any attempt to concoct a letter of this character and have it executed subsequent to the date of the Keljikan-McCarthy, Inc. agreement for later use as evi-

dence or otherwise, and I expressly clear these two attorneys of any such implication.

That is not to say, however, that I consider the letter of June 4 to have any probative value in support of the plaintiff's case. I find that the plaintiff Butler had no authority whatsoever to execute such a letter on behalf of Glenn McCarthy or Glenn McCarthy, Inc. or any of the other defendants. And I find further that the plaintiff Benton knew very well that Butler had no such authority. Thus, the June 4 letter is in no way binding upon the defendants or any of them.

The only effect of the letter, in my view, is to indicate that the plaintiffs were determined to press their claim to a carried interest in the Bolivian concession despite the fact that they were not entitled to such a carried interest and had no legal basis for it.

I conclude, therefore, that the defendants and each of them are entitled to judgment against the plaintiffs on each of the causes of action asserted in the complaint and that the defendants shall have judgment accordingly.

* * * * * *